

1 MICHAEL FREUND (SBN 99687)  
2 RYAN HOFFMAN (SBN 283297)  
3 MICHAEL FREUND & ASSOCIATES  
4 1919 Addison Street, Suite 105  
5 Berkeley, CA 94704  
6 Tel: (510) 540-1992  
7 Fax: (510) 540-5543

8 Attorneys for Plaintiff  
9 ENVIRONMENTAL RESEARCH CENTER, INC.

10 ANTHONY CORTEZ (SBN 251743)  
11 SEAN NEWLAND (SBN 300928)  
12 GREENBERG TRAUIG, LLP  
13 1201 K Street, Suite 1100  
14 Sacramento, CA 95814  
15 Tel: (916) 442-1111  
16 Fax: (916) 448-1709  
17 Email: cortezan@gtlaw.com  
18 Email: newlands@gtlaw.com

19 Attorney for Defendant  
20 WINDMILL HEALTH PRODUCTS, LLC,  
21 individually and d/b/a COUNTRY FARMS

22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
23 **COUNTY OF ALAMEDA**

24 ENVIRONMENTAL RESEARCH CENTER,  
25 INC., a non-profit California corporation,

26 Plaintiff,

27 v.

28 WINDMILL HEALTH PRODUCTS, LLC,  
individually and doing business as COUNTRY  
FARMS and DOES 1 – 100,

Defendants.

CASE NO. **RG18907037**

**STIPULATED CONSENT  
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: May 30, 2018

Trial Date: None set

**1. INTRODUCTION**

**1.1** On May 30, 2018, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by

1 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)  
2 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*  
3 (“Proposition 65”), against WINDMILL HEALTH PRODUCTS, LLC, individually and doing  
4 business as COUNTRY FARMS (“WINDMILL”) and DOES 1-100. In this action, ERC  
5 alleges that a number of products manufactured, distributed, or sold by WINDMILL contain  
6 lead or lead and cadmium, chemicals listed under Proposition 65 as carcinogens and  
7 reproductive toxins, and expose consumers to these chemicals at levels requiring a Proposition  
8 65 warning. These products (referred to hereinafter individually as a “Covered Product” or  
9 collectively as “Covered Products”) are:

- 10 • **Country Farms Farm Fresh Nutrition Bountiful Beets Delicious Natural  
11 Flavor (lead)**
- 12 • **Country Farms Farm Fresh Nutrition Super Greens Certified Organic  
13 Whole Food Formula Delicious Apple Banana Flavor (lead)**
- 14 • **Country Farms Farm Fresh Nutrition Super Greens Certified Organic  
15 Whole Food Formula Delicious Berry Flavor (lead)**
- 16 • **Country Farms Farm Fresh Nutrition Plant Protein Super Greens  
17 Protein Shake Tahitian Vanilla Flavor (lead)**
- 18 • **Country Farms Farm Fresh Nutrition Super Reds Berry Flavor (lead)**
- 19 • **Country Farms Farm Fresh Nutrition Super Greens Certified Organic  
20 Whole Food Formula Delicious Chocolate Flavor (lead, cadmium)**
- 21 • **Country Farms Farm Fresh Nutrition 7 Day Inner Cleanse Two-Part  
22 AM/PM Detox System which includes the following products: a. Country  
23 Farms Farm Fresh Nutrition 7 Day Inner Cleanse Two-Part AM/PM  
24 Detox System AM Cleanse Formula and b. Country Farms Farm Fresh  
25 Nutrition 7 Day Inner Cleanse Two-Part AM/PM Detox System PM  
26 Restore Formula (lead)**
- 27 • **Country Farms Farm Fresh Nutrition Super Greens Certified Organic  
28 Whole Food Formula Delicious Natural Flavor (lead)**

24 **1.2** ERC and WINDMILL are hereinafter referred to individually as a “Party” or  
25 collectively as the “Parties.”

26 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
27 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
28

1 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
2 and encouraging corporate responsibility.

3       **1.4** For purposes of this Consent Judgment, the Parties agree that WINDMILL is a  
4 business entity that has employed ten or more persons at all times relevant to this action and  
5 qualifies as a “person in the course of doing business” within the meaning of Proposition 65.  
6 WINDMILL manufactures, distributes, and/or sells the Covered Products.

7       **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation  
8 dated March 20, 2018 that was served on the California Attorney General, other public  
9 enforcers, and WINDMILL (“Notice”). A true and correct copy of the Notice is attached  
10 hereto as **Exhibit A** and is incorporated herein by reference. More than 60 days have passed  
11 since the Notice was served on the Attorney General, public enforcers, and WINDMILL and no  
12 designated governmental entity has filed a complaint against WINDMILL with regard to the  
13 Covered Products or the alleged violations.

14       **1.6** ERC’s Notice and Complaint allege that use of the Covered Products exposes  
15 persons in California to lead or cadmium, or both, without first providing clear and reasonable  
16 warnings in violation of California Health and Safety Code section 25249.6. WINDMILL  
17 denies all material allegations contained in the Notice and Complaint.

18       **1.7** The Parties have entered into this Consent Judgment in order to settle,  
19 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
20 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or  
21 be construed as an admission by any of the Parties or by any of their respective officers,  
22 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,  
23 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or  
24 violation of law.

25       **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall  
26 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
27 current or future legal proceeding unrelated to these proceedings.

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1           **1.9**     The Effective Date of this Consent Judgment is the date on which it is entered as  
2 a Judgment by this Court.

3           **2.     JURISDICTION AND VENUE**

4           For purposes of this Consent Judgment and any further court action that may become  
5 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
6 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction  
7 over WINDMILL as to the acts alleged in the Complaint, that venue is proper in Alameda County,  
8 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of  
9 all claims up through and including the Effective Date which were or could have been asserted in  
10 this action based on the facts alleged in the Notice and Complaint.

11           **3.     INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

12           **3.1**     Beginning within three months of the Effective Date (the “Compliance Date”),  
13 WINDMILL shall be permanently enjoined from manufacturing for sale in the State of  
14 California, “Distributing into the State of California,” or directly selling in the State of  
15 California, any Covered Products which expose a person to a “Daily Lead Exposure Level” of  
16 more than 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure Level” of more  
17 than 4.1 micrograms of cadmium per day unless it meets the warning requirements under  
18 Section 3.2.

19                   **3.1.1**   As used in this Consent Judgment, the term “Distributing into the State  
20 of California” shall mean to directly ship a Covered Product into California for sale in  
21 California or to sell a Covered Product to a distributor that WINDMILL knows or has reason to  
22 know will sell the Covered Product in California.

23                   **3.1.2**   For purposes of this Consent Judgment, the “Daily Lead Exposure  
24 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
25 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
26 product (using the largest serving size appearing on the product label), multiplied by servings  
27 of the product per day (using the largest number of recommended daily servings appearing on  
28 the label), which equals micrograms of lead exposure per day, excluding, pursuant to Section



1 3.1.4, amounts of allowances of lead in the ingredients listed in **Table 1** below. If the label  
2 contains no recommended daily servings, then the number of recommended daily servings shall  
3 be one.

4 **3.1.3** For purposes of this Consent Judgment, the “Daily Cadmium Exposure  
5 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
6 micrograms of cadmium per gram of product, multiplied by grams of product per serving of the  
7 product (using the largest serving size appearing on the product label), multiplied by servings  
8 of the product per day (using the largest number of recommended daily servings appearing on  
9 the label), which equals micrograms of cadmium exposure per day. If the label contains no  
10 recommended daily servings, then the number of recommended daily servings shall be one

11 **3.1.4** In calculating the Daily Lead Exposure Level for a Covered Product,  
12 WINDMILL shall be allowed to deduct the amount of lead which is deemed “naturally  
13 occurring” in any ingredient listed in **Table 1** that is contained in that Covered Product. under  
14 the following conditions: For each year that WINDMILL claims entitlement to a “naturally  
15 occurring” allowance, WINDMILL shall provide ERC with the following information: (a)  
16 WINDMILL must produce to ERC a list of each ingredient in the Covered Product for which a  
17 “naturally occurring” allowance is claimed; (b) WINDMILL must provide ERC with  
18 documentation of laboratory testing that complies with Sections 3.4.3 and 3.4.4 and that shows  
19 the amount of lead, if any, contained in any ingredient listed in **Table 1** that is contained in the  
20 Covered Product and for which WINDMILL intends to deduct “naturally occurring” lead; (c) If  
21 the laboratory testing reveals the presence of lead in any ingredient listed in **Table 1** that is  
22 contained in the Covered Product, WINDMILL shall be entitled to deduct up to the full amount  
23 of the allowance for that ingredient, as listed in **Table 1**, but not to exceed the total amount of  
24 lead actually contained in that ingredient in the Covered Product; and (d) If the Covered Product  
25 does not contain an ingredient listed in **Table 1**, WINDMILL shall not be entitled to a deduction  
26 for “naturally occurring” lead in the Covered Product for that ingredient. The information  
27 required by Sections 3.1.4 (a) and (b) shall be provided to ERC within thirty (30) days of the  
28

1 Effective Date, or anniversary thereof, for any year that WINDMILL shall claim entitlement to  
2 the “naturally occurring” allowance:

3 **TABLE 1**

| INGREDIENT          | ALLOWANCES OF AMOUNT OF LEAD |
|---------------------|------------------------------|
| Calcium (Elemental) | Up to 0.8 micrograms/gram    |
| Ferrous Fumarate    | Up to 0.4 micrograms/gram    |
| Zinc Oxide          | Up to 8.0 micrograms/gram    |
| Magnesium Oxide     | Up to 0.4 micrograms/gram    |
| Magnesium Carbonate | Up to 0.332 micrograms/gram  |
| Magnesium Hydroxide | Up to 0.4 micrograms/gram    |
| Zinc Gluconate      | Up to 0.8 micrograms/gram    |
| Potassium Chloride  | Up to 1.1 micrograms/gram    |
| Cocoa-powder        | Up to 1.0 micrograms/gram    |

15 **3.2 Clear and Reasonable Warnings**

16 If WINDMILL is required to provide a warning pursuant to Section 3.1, the following  
17 warning must be utilized (“Warning”):

18 **WARNING:** Consuming this product can expose you to chemicals including lead, which is  
19 known to the State of California to cause [cancer and] birth defects or other reproductive  
20 harm. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

21 WINDMILL shall use the phrase “cancer and” in the Warning if WINDMILL has reason to  
22 believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined  
23 pursuant to the quality control methodology set forth in Section 3.4 or if WINDMILL has reason  
24 to believe that another Proposition 65 chemical is present which may require a cancer warning.

25 WINDMILL shall provide the Warning to consumers of each Covered Product, either on  
26 the label of each Covered Product or through an online Warning prior to purchase. If  
27 WINDMILL, itself or by or through third-parties, provides the Covered Products to the public  
28 other than through WINDMILL’s own website, WINDMILL must provide the Warning on the  
label of each Covered Product. If the Warning is provided on the label, it must be set off from

1 other surrounding information and enclosed in a box. In addition, for any Covered Product sold  
2 over the internet where a California delivery address is indicated, the Warning shall be provided  
3 either by including the Warning on the product display page or by otherwise prominently  
4 displaying the Warning to the purchaser prior to completing the purchase as authorized by  
5 Section 25602(b) of Title 27 of the California Code of Regulations. An asterisk or other  
6 identifying method must be utilized to identify which products on the checkout page are subject  
7 to the Warning. Further, the online warning shall not be displayed in a manner wherein the  
8 purchaser must search for it in the general contents of the website.

9 The Warning shall be at least the same size as the largest of any other health or safety  
10 warnings appearing on its website or on the label or container of WINDMILL product packaging  
11 and the word “**WARNING**” shall be in all capital letters and in bold print. No statements that are  
12 intended to or likely to have the effect of diminishing the impact of, or reducing the clarity of, the  
13 Warning on the average lay person shall accompany the Warning. Further, no statements may  
14 accompany the Warning that state or imply that the source of the listed chemical has an impact on  
15 or results in a less harmful effect of the listed chemical.

16 WINDMILL must display the above Warning with such conspicuousness, as compared  
17 with other words, statements or designs on the label or container, or on its website, if applicable, to  
18 render the Warning likely to be read and understood by an ordinary individual under customary  
19 conditions of purchase or use of the product.

### 20 **3.3 Reformulated Covered Products**

21 A Reformulated Covered Product is a Covered Product for which the “Daily Lead  
22 Exposure Level” is no greater than 0.5 micrograms of lead per day and/or “Daily Cadmium  
23 Exposure Level” is no more than 4.1 micrograms of cadmium per day as determined by the quality  
24 control methodology described in Section 3.4.

### 25 **3.4 Testing and Quality Control Methodology**

26 **3.4.1** Beginning within one year of the Effective Date, WINDMILL shall  
27 arrange for lead and cadmium testing of the Covered Products at least once a year for a  
28 minimum of three consecutive years by arranging for testing of three randomly selected

1 samples of each of the Covered Products, in the form intended for sale to the end-user, which  
2 WINDMILL intends to sell or is manufacturing for sale in California, directly selling to a  
3 consumer in California or “Distributing into the State of California.” If tests conducted  
4 pursuant to this Section demonstrate that no Warning is required for a Covered Product during  
5 each of three consecutive years, then the testing requirements of this Section will no longer be  
6 required as to that Covered Product. However, if during or after the three-year testing period,  
7 WINDMILL changes ingredient suppliers for any of the Covered Products and/or reformulates  
8 any of the Covered Products, WINDMILL shall test that Covered Product annually for at least  
9 three (3) consecutive years after such change is made.

10 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or  
11 “Daily Cadmium Exposure Level,” the arithmetic mean of the lead and cadmium detection  
12 results of the three (3) randomly selected samples of the Covered Products will be controlling.

13 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
14 laboratory method that complies with the performance and quality control factors appropriate  
15 for the method used, including limit of detection, qualification, accuracy, and precision that  
16 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)  
17 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing  
18 method subsequently agreed to in writing by the Parties and approved by the Court through  
19 entry of a modified consent judgment.

20 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
21 independent third party laboratory certified by the California Environmental Laboratory  
22 Accreditation Program or an independent third-party laboratory that is registered with the  
23 United States Food & Drug Administration.

24 **3.4.5** Nothing in this Consent Judgment shall limit WINDMILL’s ability to  
25 conduct, or require that others conduct, additional testing of the Covered Products, including  
26 the raw materials used in their manufacture.

27 **3.4.6** Within thirty (30) days of receiving a written notice of further violation  
28 from ERC, WINDMILL shall deliver lab reports obtained pursuant to Section 3.4 to ERC.

1 WINDMILL shall retain all test results and documentation for a period of three years from the  
2 date of each test. ERC shall treat all documents provided as confidential.

3           **3.4.7** Except for the requirements of Section 3.1, the testing requirements of  
4 Section 3.4 of this Consent Judgment shall not apply to any Covered Products for which a  
5 Warning is provided, continuously and without interruption after the Compliance Date,  
6 pursuant to Section 3.

#### 7   **4. SETTLEMENT PAYMENT**

8           **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,  
9 attorney's fees, and costs, WINDMILL shall make a total payment of \$180,000 ("Total  
10 Settlement Amount") to ERC in two equal installments (each an "Installment Payment"). The  
11 first Installment Payment shall be made within 5 days of the Effective Date or January 2, 2019,  
12 whichever is later. The second Installment Payment shall be made within 35 days of the  
13 Effective Date or February 2, 2019, whichever is later.

14           WINDMILL shall make each Installment Payment by wire transfer to ERC's account,  
15 for which ERC will give WINDMILL the necessary account information on or before the  
16 Effective Date. The Total Settlement Amount shall be apportioned as follows:

17           **4.2** \$75,183.79 of the Total Settlement Amount shall be considered a civil penalty  
18 pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75%  
19 (56,387.84) of the civil penalty to the Office of Environmental Health Hazard Assessment  
20 ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in  
21 accordance with California Health and Safety Code section 25249.12(c). ERC will retain the  
22 remaining 25% (18,795.95) of the civil penalty.

23           **4.3** \$4,831.42 of the Total Settlement Amount shall be distributed to ERC as  
24 reimbursement to ERC for reasonable costs incurred in bringing this action.

25           **4.4** \$56,387.76 of the Total Settlement Amount shall be distributed to ERC as an  
26 Additional Settlement Payment ("ASP"), pursuant to California Code of Regulations, title 11,  
27 sections 3203, subdivision (d) and 3204. ERC will utilize the ASP for activities that address the  
28 same public harm as allegedly caused by WINDMILL in this matter. These activities are

1 detailed below and support ERC's overarching goal of reducing and/or eliminating hazardous  
2 and toxic chemicals in dietary supplement products in California. ERC's activities have had, and  
3 will continue to have, a direct and primary effect within the State of California because  
4 California consumers will be benefitted by the reduction and/or elimination of exposure to lead  
5 and/or cadmium in dietary supplements and/or by providing clear and reasonable warnings to  
6 California consumers prior to ingestion of the products.

7       Based on a review of past years' actual budgets, ERC is providing the following list of  
8 activities ERC engages in to protect California consumers through Proposition 65 citizen  
9 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those  
10 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary  
11 supplement products that may contain lead and/or cadmium and are sold to California  
12 consumers. This work includes continued monitoring and enforcement of past consent  
13 judgments and settlements to ensure companies are in compliance with their obligations  
14 thereunder, with a specific focus on those judgments and settlements concerning lead and/or  
15 cadmium. This work also includes investigation of new companies that ERC does not obtain any  
16 recovery through settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM (10-  
17 20%): maintaining ERC's Voluntary Compliance Program by acquiring products from  
18 companies, developing and maintaining a case file, testing products from these companies,  
19 providing the test results and supporting documentation to the companies, and offering guidance  
20 in warning or implementing a self-testing program for lead and/or cadmium in dietary  
21 supplement products; and (3) "GOT LEAD" PROGRAM (up to 5%): maintaining ERC's "Got  
22 Lead?" Program which reduces the numbers of contaminated products that reach California  
23 consumers by providing access to free testing for lead in dietary supplement products (Products  
24 submitted to the program are screened for ingredients which are suspected to be contaminated,  
25 and then may be purchased by ERC, catalogued, sent to a qualified laboratory for testing, and the  
26 results shared with the consumer that submitted the product).

27       ERC shall be fully accountable in that it will maintain adequate records to document and  
28 will be able to demonstrate how the ASP funds will be spent and can assure that the funds are



1 being spent only for the proper, designated purposes described in this Consent Judgment. ERC  
2 shall provide the Attorney General, within thirty days of any request, copies of documentation  
3 demonstrating how such funds have been spent.

4 **4.5** \$16,847.50 of the Total Settlement Amount shall be distributed to Michael  
5 Freund as reimbursement of ERC's attorney's fees while \$26,749.53 of the Total Settlement  
6 Amount shall be distributed to ERC for its in-house legal fees. Except as explicitly provided  
7 herein, each Party shall bear its own fees and costs.

8 **4.6** In the event that WINDMILL fails to remit an Installment Payment owed under  
9 Section 4 of this Consent Judgment on or before the date that such Installment Payment is due  
10 pursuant to Section 4.1, WINDMILL shall be deemed to be in material breach of its obligations  
11 under this Consent Judgment. ERC shall provide written notice of the delinquency to  
12 WINDMILL via electronic mail. If WINDMILL fails to deliver the delinquent payment within  
13 five (5) days from the written notice, the Total Settlement Amount, less any amounts  
14 previously paid pursuant to Section 4.1, shall be immediately due and owing and shall accrue  
15 interest at the statutory judgment interest rate provided in the California Code of Civil  
16 Procedure section 685.010. Additionally, WINDMILL agrees to pay ERC's reasonable  
17 attorneys' fees and costs for any efforts to collect the payment(s) due under this Consent  
18 Judgment.

## 19 **5. MODIFICATION OF CONSENT JUDGMENT**

20 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by  
21 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or  
22 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a  
23 modified consent judgment.

24 **5.2** If WINDMILL seeks to modify this Consent Judgment under Section 5.1, then  
25 WINDMILL must provide written notice to ERC of its intent ("Notice of Intent"). If ERC  
26 seeks to meet and confer regarding the proposed modification in the Notice of Intent, then ERC  
27 must provide written notice to WINDMILL within thirty (30) days of receiving the Notice of  
28 Intent. If ERC notifies WINDMILL in a timely manner of ERC's intent to meet and confer,

1 then the Parties shall meet and confer in good faith as required in this Section. The Parties  
2 shall meet in person or via telephone within thirty (30) days of ERC's notification of its intent  
3 to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the proposed  
4 modification, ERC shall provide to WINDMILL a written basis for its position. The Parties  
5 shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any  
6 remaining disputes. Should it become necessary, the Parties may agree in writing to different  
7 deadlines for the meet-and-confer period.

8       **5.3** In the event that WINDMILL initiates or otherwise requests a modification  
9 under Section 5.1, and the meet and confer process leads to a joint motion or application for a  
10 modification of the Consent Judgment, WINDMILL shall reimburse ERC its costs and  
11 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and  
12 arguing the motion or application.

13       **5.4** By contrast, where the meet-and-confer process does not lead to a joint motion  
14 or application in support of a modification of the Consent Judgment, then either Party may seek  
15 judicial relief on its own.

16       **6. RETENTION OF JURISDICTION; ENFORCEMENT OF AGREEMENT**

17       **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate  
18 this Consent Judgment.

19       **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated  
20 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall  
21 inform WINDMILL in a reasonably prompt manner of its test results, including information  
22 sufficient to permit WINDMILL to identify the Covered Products at issue. WINDMILL shall,  
23 within thirty (30) days following such notice, provide ERC with testing information, from an  
24 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,  
25 demonstrating WINDMILL's compliance with the Consent Judgment, if warranted. The  
26 Parties shall first attempt to resolve the matter prior to ERC taking any further legal action.

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1       **7. APPLICATION OF CONSENT JUDGMENT**

2           This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
3 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
4 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,  
5 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no  
6 application to any Covered Product which is distributed or sold exclusively outside the State of  
7 California and which is not used by California consumers.

8       **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

9           **8.1**       This Consent Judgment is a full, final, and binding resolution between ERC,  
10 on behalf of itself and in the public interest, and WINDMILL and its respective officers,  
11 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,  
12 franchisees, licensees, customers (not including private label customers of WINDMILL),  
13 distributors, wholesalers, retailers, and all other upstream and downstream entities in the  
14 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any  
15 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,  
16 hereby fully releases and discharges the Released Parties from any and all claims, actions,  
17 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses  
18 asserted, or that could have been asserted from the handling, use, or consumption of the  
19 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations  
20 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding  
21 lead and/or cadmium up to and including the Effective Date.

22           **8.2**       ERC on its own behalf only, and WINDMILL on its own behalf only,  
23 further waive and release any and all claims they may have against each other for all actions or  
24 statements made or undertaken in the course of seeking or opposing enforcement of Proposition  
25 65 in connection with the Notice and Complaint up through and including the Effective Date,  
26 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to  
27 enforce the terms of this Consent Judgment.

28           **8.3**       It is possible that other claims not known to the Parties, arising out of the facts

1 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be  
2 discovered. ERC on behalf of itself only, and WINDMILL on behalf of itself only,  
3 acknowledge that this Consent Judgment is expressly intended to cover and include all such  
4 claims up through and including the Effective Date, including all rights of action therefore.  
5 ERC and WINDMILL acknowledge that the claims released in Sections 8.1 and 8.2 above may  
6 include unknown claims, and nevertheless waive California Civil Code section 1542 as to any  
7 such unknown claims. California Civil Code section 1542 reads as follows:

8           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
9           CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
10          FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
11          KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS  
12          OR HER SETTLEMENT WITH THE DEBTOR.

13 ERC on behalf of itself only, and WINDMILL on behalf of itself only, acknowledge and  
14 understand the significance and consequences of this specific waiver of California Civil Code  
15 section 1542.

16           **8.4**     Compliance with the terms of this Consent Judgment shall be deemed to  
17 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead  
18 and/or cadmium in the Covered Products as set forth in the Notice and Complaint.

19           **8.5**     Nothing in this Consent Judgment is intended to apply to any occupational or  
20 environmental exposures arising under Proposition 65, nor shall it apply to any of WINDMILL  
21 products other than the Covered Products.

## 22 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

23           In the event that any of the provisions of this Consent Judgment are held by a court to be  
24 unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

## 25 **10. GOVERNING LAW**

26           The terms and conditions of this Consent Judgment shall be governed by and construed in  
27 accordance with the laws of the State of California.

## 28 **11. PROVISION OF NOTICE**

          All notices required to be given to either Party to this Consent Judgment by the other shall  
be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via

1 email may also be sent.

2 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

3 Chris Heptinstall  
4 Executive Director  
5 Environmental Research Center  
6 3111 Camino Del Rio North, Suite 400  
7 San Diego, CA 92108  
8 Tel: (619) 500-3090  
9 Email: chris\_erc501c3@yahoo.com

10 With a copy to:  
11 MICHAEL FREUND  
12 RYAN HOFFMAN  
13 MICHAEL FREUND & ASSOCIATES  
14 1919 Addison Street, Suite 105  
15 Berkeley, CA 94704  
16 Tel: (510) 540-1992  
17 Fax: (510) 540-5543

18 **WINDMILL HEALTH PRODUCTS, LLC**  
19 ***[PROVIDE NAME AND ADDRESS]***

20 With a copy to:  
21 ANTHONY J. CORTEZ  
22 SEAN A. NEWLAND  
23 GREENBERG TRAUIG, LLP  
24 1201 K Street, Suite 1100  
25 Sacramento, CA 95814  
26 Ph: 916-442-1111  
27 Email: cortezan@gtlaw.com  
28 Email: newlands@gtlaw.com

**12. COURT APPROVAL**

12.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a Motion for Court Approval. The Parties shall use their best efforts to support entry of this Consent Judgment.

12.2 If the California Attorney General objects to any term in this Consent Judgment, the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible prior to the hearing on the motion.

1           **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
2 void and have no force or effect.

3           **13. EXECUTION AND COUNTERPARTS**

4           This Consent Judgment may be executed in counterparts, which taken together shall be  
5 deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid  
6 as the original signature.

7           **14. DRAFTING**

8           The terms of this Consent Judgment have been reviewed by the respective counsel for each  
9 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and  
10 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and  
11 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,  
12 and no provision of this Consent Judgment shall be construed against any Party, based on the fact  
13 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any  
14 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated  
15 equally in the preparation and drafting of this Consent Judgment.

16           **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

17           If a dispute arises with respect to either Party's compliance with the terms of this Consent  
18 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in  
19 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be  
20 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

21           **16. ENFORCEMENT**

22           ERC may, by motion or order to show cause before the Superior Court of Alameda  
23 County, enforce the terms and conditions contained in this Consent Judgment. In any action  
24 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,  
25 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.  
26 To the extent the failure to comply with the Consent Judgment constitutes a violation of  
27 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,  
28 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by



1 law for failure to comply with Proposition 65 or other laws.

2 **17. ENTIRE AGREEMENT, AUTHORIZATION**

3 **17.1** This Consent Judgment contains the sole and entire agreement and  
4 understanding of the Parties with respect to the entire subject matter herein, and any and all  
5 prior discussions, negotiations, commitments, and understandings related hereto. No  
6 representations, oral or otherwise, express or implied, other than those contained herein have  
7 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
8 herein, shall be deemed to exist or to bind any Party.

9 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
10 authorized by the Party he or she represents to stipulate to this Consent Judgment.

11 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
12 **CONSENT JUDGMENT**

13 This Consent Judgment has come before the Court upon the request of the Parties. The  
14 Parties request the Court to fully review this Consent Judgment and, being fully informed  
15 regarding the matters which are the subject of this action, to:

16 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
17 equitable settlement of all matters raised by the allegations of the Complaint that the matter has  
18 been diligently prosecuted, and that the public interest is served by such settlement; and

19 (2) Make the findings pursuant to California Health and Safety Code section  
20 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

21 **IT IS SO STIPULATED:**

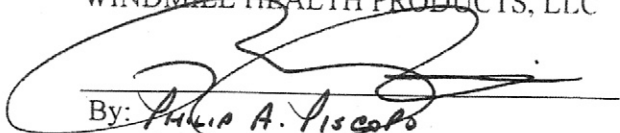
22 Dated: \_\_\_\_\_, 2018

ENVIRONMENTAL RESEARCH  
CENTER, INC.

23  
24 By: \_\_\_\_\_  
25 Chris Heptinstall, Executive Director  
26  
27  
28

1  
2 Dated: 10/1, 2018


WINDMILL HEALTH PRODUCTS, LLC

3  
4 By:   
Its: CHIEF FINANCIAL OFFICER

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11  
12 **APPROVED AS TO FORM:**


13 Dated: 9/29, 2018

MICHAEL FREUND AND ASSOCIATES

14  
15 By:   
16 Michael Freund  
17 Ryan Hoffman  
18 Attorneys for Plaintiff Environmental  
Research Center, Inc.

19 Dated: October 1, 2018

GREENBERG TRAUIG, LLP

20  
21 By:   
22 Anthony Cortez  
23 Sean Newland  
24 Attorney for Windmill Health Products,  
25 LLC

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Dated: \_\_\_\_\_, 2018


WINDMILL HEALTH PRODUCTS, LLC

By: \_\_\_\_\_  
Its:

**APPROVED AS TO FORM:**

Dated: 9/29/, 2018

MICHAEL FREUND AND ASSOCIATES

By:   
Michael Freund  
Ryan Hoffman  
Attorneys for Plaintiff Environmental  
Research Center, Inc.

Dated: \_\_\_\_\_, 2018

GREENBERG TRAUIG, LLP

By: \_\_\_\_\_  
Anthony Cortez  
Sean Newland  
Attorney for Windmill Health Products,  
LLC

**ORDER AND JUDGMENT**

Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is approved and Judgment is hereby entered according to its terms.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: \_\_\_\_\_, 2018

\_\_\_\_\_  
Judge of the Superior Court

EXHIBIT A

**Michael Freund & Associates**

1919 Addison Street, Suite 105  
Berkeley, CA 94704  
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.

Ryan Hoffman, Esq.

March 20, 2018

**NOTICE OF VIOLATION OF  
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.  
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violator identified below.

**Alleged Violator.** The name of the company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

**Windmill Health Products, LLC, individually and doing business as Country Farms**

**Consumer Products and Listed Chemicals.** The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

1. **Country Farms Farm Fresh Nutrition Bountiful Beets Delicious Natural Flavor - Lead**
2. **Country Farms Farm Fresh Nutrition Super Greens Certified Organic Whole Food Formula Delicious Apple Banana Flavor - Lead**
3. **Country Farms Farm Fresh Nutrition Super Greens Certified Organic Whole Food Formula Delicious Berry Flavor - Lead**
4. **Country Farms Farm Fresh Nutrition Plant Protein Super Greens Protein Shake Tahitian Vanilla Flavor - Lead**
5. **Country Farms Farm Fresh Nutrition Super Reds Berry Flavor - Lead**
6. **Country Farms Farm Fresh Nutrition Super Greens Certified Organic Whole Food Formula Delicious Chocolate Flavor - Lead, Cadmium**
7. **Country Farms Farm Fresh Nutrition 7 Day Inner Cleanse Two-Part AM/PM Detox System - Lead**
  - a. **Country Farms Farm Fresh Nutrition 7 Day Inner Cleanse Two-Part AM/PM Detox System AM Cleanse Formula**
  - b. **Country Farms Farm Fresh Nutrition 7 Day Inner Cleanse Two-Part AM/PM Detox System PM Restore Formula**



**8. Country Farms Farm Fresh Nutrition Super Greens Certified Organic Whole Food Formula Delicious Natural Flavor - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997, while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to these chemicals has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least March 20, 2015, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time-consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



---

Michael Freund

**Attachments**

Certificate of Merit

Certificate of Service

OEHHA Summary (to Windmill Health Products, LLC, individually and doing business as Country Farms, and its Registered Agent for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Windmill Health Products, LLC, individually and doing business as Country Farms**

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.



---

Michael Freund

Dated: March 20, 2018

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On March 20, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Windmill Health Products, LLC, individually and  
doing business as Country Farms  
10 Henderson Drive  
West Caldwell, NJ 07006

Angela Van Houten  
(Registered Agent for Windmill Health Products, LLC,  
individually and doing business as Country Farms)  
10 Henderson Drive  
West Caldwell, NJ 07006

Current President or CEO  
Windmill Health Products, LLC, individually and  
doing business as Country Farms  
6 Henderson Drive  
West Caldwell, NJ 07006

On March 20, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550

On March 20, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
March 20, 2018  
Page 5

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

Allison Haley, District Attorney  
Napa County  
1127 First Street, Suite C  
Napa, CA 94559  
CEPD@countyofnapa.org

Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
Prop65@rivcoda.org

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
Prop65@sacda.org

Gregory Alker, Assistant District Attorney  
San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
gregory.alker@sfgov.org

Tori Verber Salazar, District Attorney  
San Joaquin County  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney  
San Luis Obispo County  
County Government Center Annex, 4<sup>th</sup> Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

Yen Dang, Supervising Deputy District Attorney  
Santa Clara County  
70 W Hedding St  
San Jose, CA 95110  
EPU@da.sccgov.org

Jeffrey S. Rosell, District Attorney  
Santa Cruz County  
701 Ocean Street  
Santa Cruz, CA 95060  
Prop65DA@santacruzcounty.us

Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
jbarnes@sonoma-county.org

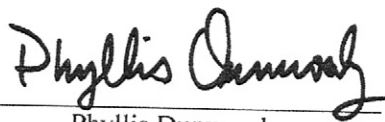
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

Jeff W. Reisig, District Attorney  
Yolo County  
301 Second Street  
Woodland, CA 95695  
cfepd@yolocounty.org

On March 20, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on March 20, 2018, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

Service List

|  |  |   |  |
|--|--|---|--|
| District Attorney, Alameda County<br>1225 Fallon Street, Suite 900<br>Oakland, CA 94612        | District Attorney, Kings County<br>1400 West Lacey Boulevard<br>Hanford, CA 93230                                  | District Attorney, Plumas County<br>520 Main Street, Room 404<br>Quincy, CA 95971                         | District Attorney, Trinity County<br>Post Office Box 310<br>Weaverville, CA 96093                              |
| District Attorney, Alpine County<br>P.O. Box 248<br>Markleeville, CA 96120                     | District Attorney, Lake County<br>255 N. Forbes Street<br>Lakeport, CA 95453                                       | District Attorney, San Benito County<br>419 Fourth Street, 2nd Floor<br>Hollister, CA 95023               | District Attorney, Tuolumne County<br>423 N. Washington Street<br>Sonora, CA 95370                             |
| District Attorney, Amador County<br>708 Court Street, Suite 202<br>Jackson, CA 95642           | District Attorney, Los Angeles County<br>Hall of Justice<br>211 West Temple St., Ste 1200<br>Los Angeles, CA 90012 | District Attorney, San Bernardino County<br>303 West Third Street<br>San Bernadino, CA 92415              | District Attorney, Yuba County<br>215 Fifth Street, Suite 152<br>Marysville, CA 95901                          |
| District Attorney, Butte County<br>25 County Center Drive, Suite 245<br>Oroville, CA 95965     | District Attorney, Madera County<br>209 West Yosemite Avenue<br>Madera, CA 93637                                   | District Attorney, San Diego County<br>330 West Broadway, Suite 1300<br>San Diego, CA 92101               | Los Angeles City Attorney's Office<br>City Hall East<br>200 N. Main Street, Suite 800<br>Los Angeles, CA 90012 |
| District Attorney, Calaveras County<br>891 Mountain Ranch Road<br>San Andreas, CA 95249        | District Attorney, Marin County<br>3501 Civic Center Drive, Room 130<br>San Rafael, CA 94903                       | District Attorney, San Mateo County<br>400 County Ctr., 3rd Floor<br>Redwood City, CA 94063               | San Diego City Attorney's Office<br>1200 3rd Avenue, Ste 1620<br>San Diego, CA 92101                           |
| District Attorney, Colusa County<br>346 Fifth Street Suite 101<br>Colusa, CA 95932             | District Attorney, Mariposa County<br>Post Office Box 730<br>Mariposa, CA 95338                                    | District Attorney, Santa Barbara County<br>1112 Santa Barbara Street<br>Santa Barbara, CA 93101           | San Francisco, City Attorney<br>City Hall, Room 234<br>1 Dr Carlton B Goodlett PL<br>San Francisco, CA 94102   |
| District Attorney, Del Norte County<br>450 H Street, Room 171<br>Crescent City, CA 95531       | District Attorney, Mendocino County<br>Post Office Box 1000<br>Ukiah, CA 95482                                     | District Attorney, Shasta County<br>1355 West Street<br>Redding, CA 96001                                 | San Jose City Attorney's Office<br>200 East Santa Clara Street,<br>16th Floor<br>San Jose, CA 95113            |
| District Attorney, El Dorado County<br>515 Main Street<br>Placerville, CA 95667                | District Attorney, Merced County<br>550 W. Main Street<br>Merced, CA 95340   | District Attorney, Sierra County<br>100 Courthouse Square, 2 <sup>nd</sup> Floor<br>Downieville, CA 95936 |  |
| District Attorney, Fresno County<br>2220 Tulare Street, Suite 1000<br>Fresno, CA 93721         | District Attorney, Modoc County<br>204 S Court Street, Room 202<br>Alturas, CA 96101-4020                          | District Attorney, Siskiyou County<br>Post Office Box 986<br>Yreka, CA 96097                              |  |
| District Attorney, Glenn County<br>Post Office Box 430<br>Willows, CA 95988                    | District Attorney, Mono County<br>Post Office Box 617<br>Bridgeport, CA 93517                                      | District Attorney, Solano County<br>675 Texas Street, Ste 4500<br>Fairfield, CA 94533                     |  |
| District Attorney, Humboldt County<br>825 5th Street 4 <sup>th</sup> Floor<br>Eureka, CA 95501 | District Attorney, Nevada County<br>201 Commercial Street<br>Nevada City, CA 95959                                 | District Attorney, Stanislaus County<br>832 12th Street, Ste 300<br>Modesto, CA 95354                     |  |
| District Attorney, Imperial County<br>940 West Main Street, Ste 102<br>El Centro, CA 92243     | District Attorney, Orange County<br>401 West Civic Center Drive<br>Santa Ana, CA 92701                             | District Attorney, Sutter County<br>463 2 <sup>nd</sup> Street<br>Yuba City, CA 95991                     |  |
| District Attorney, Inyo County<br>P.O. Drawer D<br>Independence, CA 93526                      | District Attorney, Placer County<br>10810 Justice Center Drive,<br>Ste 240<br>Roseville, CA 95678                  | District Attorney, Tehama County<br>Post Office Box 519<br>Red Bluff, CA 96080                            |  |
| District Attorney, Kern County<br>1215 Truxtun Avenue<br>Bakersfield, CA 93301                 |  |   |  |

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

#### THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

---

<sup>1</sup> All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.



**The "Proposition 65 List."** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

**Clear and reasonable warnings.** A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

**Prohibition from discharges into drinking water.** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### **DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?**

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

**Grace Period.** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

**Governmental agencies and public water utilities.** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

**Businesses with nine or fewer employees.** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

**Exposures that pose no significant risk of cancer.** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures that will produce no observable reproductive effect at 1,000 times the level in question.** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures to Naturally Occurring Chemicals in Food.** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

**Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water.** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for

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<sup>2</sup> See Section 25501(a)(4).

chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

### ***HOW IS PROPOSITION 65 ENFORCED?***

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:  
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.